in the demised premises belonged to the tenant, and the inference is one which, in those circumstances, must arise. In our view, on these facts, the articles in question were in the possession, order or disposition of the tenant by the consent and permission of Cosdel under such circumstances that the tenant was the reputed owner thereof. In view of our conclusion on this issue, s 10 of the Act has no application, and no order ought to be made for the release of the articles.

There is one further issue which was not decided in the court below, but which was raised and argued before us. Under s 10(2) of the Act, no order of release shall be made unless Cosdel satisfies the court that the tenant at the time of distress had no right of property or beneficial interest in the articles claimed by Cosdel. The issue therefore is whether the tenant had any right of property or beneficial interest in the articles. Here again, the burden is on Cosdel, and for this purpose it is necessary to examine the evidence adduced by Cosdel in discharge of this burden. In the first affidavit filed in support of the application for release, David Ang, the general manager of Cosdel, said that the articles in question belonged to Cosdel and produced a bundle of consignment notes and other documents in support. All the consignment notes issued by Cosdel were actually sale invoices which gave a description of the goods and the prices thereof and bore an indorsement at the bottom: 'NB. Goods sold are not returnable'. These documents therefore did not really support David Ang's claim. On the contrary, they showed that the goods had been sold by Cosdel. In his second affidavit, David Ang said that the arrangement made between Cosdel and the tenant was that the articles would be consigned to the tenant for sale in the demised premises and the tenant would collect the sale proceeds and after payment of the monthly sum would pay the proceeds to Cosdel, and that whatever articles which had not been sold belonged to and remained at the risk of Cosdel. He also relied on the fact that the provisional liquidator of the tenant — liquidation of the tenant having then commenced — had acknowledged that the tenant had no right of property or beneficial interest in the articles and the articles were the property of Cosdel. What he alleged here was not wholly borne out by the arrangement which was made between Cosdel and the tenant, and in this connection, the affidavit of Yee Oi Yoke, the personal assistant to the managing director of the tenant, is of assistance. Yee said that Cosdel's articles were displayed in open shelves provided by Cosdel in the demised premises and the sales were attended to by Cosdel's promoters — sometimes one and sometimes two — and she produced the document which formalized the arrangement between the two parties. However, the sales of Cosdel's articles were transacted through the tenant's cashiers who, using a special code assigned for such sale, collected moneys and issued receipts bearing the tenant's name. The transactions were entered in the books of the tenant and on the tenth day of each month the tenant paid to Cosdel the total collections from the sales of Cosdel's articles for the preceding months after deducting for the tenant's own account the sum of $4,560, being the monthly sum charged to Cosdel. The document exhibited by Yee contained, inter alia, two material provisions, namely, (i) that the tenant was required to take out insurance on all merchandise and fixtures in the demised premises against fire and theft, and (ii) that interim and year-end physical stock counts would be taken of the goods displayed by Cosdel and any stock discrepancy in excess of 3% of the record values should be shared equally between Cosdel and the tenant at the 'retail value of the merchandise'. All these showed that the tenant had some right of property in the articles. In particular, the tenant had the property in the articles which it could pass to purchasers on sale of the articles, and all such sales were transacted by the tenant. On the basis of the evidence adduced, Cosdel clearly had not, in our opinion, discharged the burden of proving that the tenant had no right of property in the articles at the material time. Accordingly, on this issue, the appellant also succeeded.

*Appeal allowed.*

Solicitors: *Allen & Gledhill*; *Godwin & Co.*

Reported by *Zarinah Marican*

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## Poh Kiong Kok v Management Corporation Strata Title Plan No 581

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 180 OF 1990
CHAN SEK KEONG J
19 JULY 1990

*Land Law — Condominiums — Management corporation — Each subsidiary proprietor granted exclusive use of one parking lot — Whether such scheme illegal — Land Titles (Strata) Act (Cap 158, 1985 Ed), s 41(8) & First Schedule byelaw 8*

The plaintiff is a joint subsidary proprietor of a residential unit in a condominium. The defendant is the management corporation of that condominium. At the condominium, there was a parking scheme which regulated the enjoyment and use of parking lots by the subsidary proprietors whereby each proprietor was only allowed to park his car at the parking lot allocated to him and at no other. No resident was without a reserved lot, but some lots were better than others. The defendant ignored the complaints of the plaintiff about the unfairness of the scheme. The plaintiff therefore commenced the action for, inter alia, a declaration that no subsidary proprietor was allowed to be excluded from the use of enjoyment of any part of the common property where that part was used by another subsidary proprietor. The plaintiff complained of abuse of power of the defendant

in their management of the parking scheme, but no oral evidence was adduced.

**Held**, allowing the plaintiff's application:

(1) The evidence showed that the lots were allocated permanently. The plaintiff was therefore permanently deprived of the use and enjoyment of all the parking lots save that allocated to him.

(2) At common law, all co-proprietors had a unity of possession of common property and no proprietor could claim possession of a separate part of the property against his co-proprietor. In the absence of any statutory provision which abrogated or modified the common law rights of co-owners of land, or any statutory power vested in the management corporation to enable it to do so, the management corporation had no power to prevent any proprietor from parking his car at any parking lot.

(3) The existing scheme, even if binding on the proprietors vis-a-vis the developers ceased to have effect when s 41(8) of the Land Titles (Strata) Act came into force as s 41(8) is incompatible with the scheme.

(4) There is no apparent inconsistency between s 41(8) and byelaw 8. If there were any inconsistency, the court would be constrained to hold that the byelaw must give way to the substantive provision notwithstanding that it is enacted by Parliament.

(5) Order 53 of the Rules of Supreme Court 1970 did not apply where the plaintiff was seeking a declaration and where he was complaining of a breach of his private, and not his public, rights.

(6) The plaintiff was accordingly allowed to park his car at any parking lot in the condominium. Since the plaintiff brought the action partly for the benefit of the other subsidary proprietors, he is entitled to costs on a full indemnity basis to be paid by the defendant.

**Cases referred to**

1 *Jacobs* v *Seward* (1872) LR 5 HL 464 (refd)
2 *Ong Hoo Yong* v *Kok Yin Weng* [1965] 2 MLJ 97 (refd)
3 *Re Preston* [1985] 1 AC 835 (distd)
4 *R* v *Epping & Harlow General Commissioners* [1983] 3 All ER 257 (distd)
5 *R* v *Disciplinary Committee of the Jockey Club* [1990] Times LR 3 January (refd)

**Legislation referred to**

Land Titles (Strata) Act (Cap 158, 1985 Ed) ss 3, 13(1), 41(8), 96, 97, 104, First Schedule byelaw 8
Rules of Supreme Court 1970 O 53

*B Rengarajoo* for the plaintiff.
*Chia Ee Lin (Miss)* for the defendant.

*Cur Adv Vult*

**Chan Sek Keong J**: The plaintiff is jointly with his wife a subsidiary proprietor of a residential unit in Pandan Valley, a condominium which is made up of more than 600 residential and shopping units housed in seven separate blocks of buildings called Acacia, Bauhinia, Camellia, Chempaka, Eugenia, Poinciana and Poinsetta. The defendant is the management corporation of Pandan Valley.

The following facts are not in dispute. Pandan Valley has a total of 781 car park lots ('parking lots'), 495 of which are housed in four multi-storey buildings and the remainder are located on ground level land. The use and enjoyment of the parking lots by the subsidiary proprietors ('the proprietors') is regulated by a scheme, which operates for an indefinite duration (or, in the opinion of the defendant, until it is withdrawn or modified by a resolution of the majority of the proprietors) whereby each proprietor may only park his car at a parking lot allocated to him and at no other parking lot. The use is exclusive to him. Six hundred and forty-one parking lots have been reserved for the use of the proprietors and the remaining 140 for the use of visitors. No resident is without a reserved parking lot, but some parking lots are considered better than others in terms of location and the quality of shelter, eg covered lots are better than uncovered lots, and those at road level and on the lower floors are more convenient than those on the upper floors, etc.

The plaintiff's reserved parking lot is located on the top floor of the multi-storey car park, and although the building is adjacent to his residential unit, the parking lot is considered by him as inferior. The plaintiff has complained to the council about the unfairness of the current scheme. He has also written to the Commissioner of Buildings and obtained the Commissioner's opinion dated 12 July 1989 (which he has transmitted to the council) that 'residents should be allowed to park at any available car park lots on a 'first come first serve' basis unless the management corporation has pursuant to a unanimous resolution under s 41(8) of the Land Titles (Strata) Act (Cap 158, 1985 Ed) ('the Act') made the relevant byelaws in granting subsidiary proprietors the exclusive use of the respective car park lots'.

The council has ignored the complaints of the plaintiff who, in consequence, has commenced the present action for the following declaratory orders:

(1) A declaration that no subsidiary proprietor can be excluded from the use and enjoyment of any part of the common property when such use and enjoyment of that common property is made available to another subsidiary proprietor by virtue of the equal right to use and enjoy the common property vested on all the subsidiary proprietors as tenants in common, unless the defendant has pursuant to a unanimous resolution under s 41(8) of the Land Titles (Strata) Act (Cap 158, 1985 Ed) made the relevant byelaw in granting the other subsidiary proprietor the exclusive use of that part of the common property, and that as such the defendant is wrong in maintaining an allocation of car

park lots whereby each of the car park lots concerned is allocated to a specific subsidiary proprietor for his exclusive use.

(2) A declaration that the defendant in maintaining the abovementioned allocation of car park lots despite the fact that there is a disparity in the advantages provided by the various car park lots has distributed the benefits unequally and has thereby also breached the principle of equality is equity.

(3) An order that the defendant follows the advice of the Commissioner of Builings which is to allow all residents to park at any available car park lots on a first come first serve basis and undo the effect since caused by its abovementioned allocation by notifying all the subsidiary proprietors of the Commissioner's advice and withdraw the use of the car park labels which are numbered for parking on specific car park lots.

The plaintiff, in his affidavit, has complained of abuse of power and mismanagement by the incumbent council in the following ways:

(a) gave preferential treatment to members of the council to change their allocated parking lots to better ones, but denied the same opportunity to other proprietors to do the same whenever there were unused parking lots available;

(b) refused, when requested by the plaintiff, to disclose information on the allocation of parking lots;

(c) refused to change the parking scheme to enable the superior parking lots to be rotated amongst all the proprietors, with the result that certain proprietors were disadvantaged permanently;

(d) suddenly and arbitrarily changed (by cancelling) one of its guidelines (which permitted parking lots unoccupied for more than three months to be available for allocation to other proprietors);

(e) granted to a subsidiary proprietor the exclusive use of two parking lots when he had one car.

The plaintiff has also complained of habitual abuses by some proprietors in leaving their allocated parking lots vacant (whilst depriving other proprietors of the right to use such lots) and at the same time using other vacant parking lots in the estate.

The defence, in so far as it relates to allegations of fact, is a general denial of the plaintiff's allegations of abuse of power and mismanagement. The defendant also says that the existing parking system was not established during the tenure of the present council and that it is merely administering a system which was established by the developers, viz DBS (Realty) Pte Ltd. As neither the plaintiff nor the defendant elected to call oral evidence, I made no finding on the allegations of abuse and mismanagement and confine myself to considering the validity of the existing parking scheme on the undisputed basis it confers on proprietors permanent and exclusive rights of use and enjoyment of the parking lots allocated to them by the developers.

The incumbent council has issued a set of guidelines pertaining to the use of the parking lots which are as follows:

(1) Common properties
All car park lots are common properties. As such, they are not attached to any particular subsidiary strata lot. Owners intending to sell or rent their apartment are therefore advised not to misrepresent to potential purchasers/tenants that they are automatically entitled to any particular car park lot.

(2) Entitlement
Each apartment is entitled to the use of one (1) allocated lot. Subsequent cars will be allocated visitor car park labels. This is subject to availability of lots.

(3) Vacant allocated lots
Some allocated lots may be left vacant for one reason or another. To ensure that all car park lots are utilized to the maximum, residents who are aware of these unused lots may park their cars there so long as the resident who has been allocated the use of the lot does not lodge a complaint. Where a complaint is lodged, residents are advised to remove their car from the complainant's lot.

(4) Parking in residents' reserved lots
All residents are strongly advised to respect each other's reserved lots. If however, your reserved lot is wrongfully taken up by another car, please co-operate by parking at another location which is not a reserved lot, and does not cause obstructions or danger to other road users. You can then lodge a complaint with the security office.

(5) Parking in visitors' lots
All residents are strongly encouraged to advise all their visitors to park in clearly demarcated visitors' lots (in white marking) and not to occupy reserved lots which are identified with red markings. Please also advise all your visitors to co-operate with security personnel by giving the unit numbers they are visiting. This is to facilitate easy communication in cases of emergency.

In these guidelines, the council recognizes that the parking lots are common property but, at the same time, also recognizes that the parking lots have been allocated on an exclusive and permanent basis. It is true that guideline 1 appears to suggest that the allocation lapses upon the sale or letting of any unit, but counsel for the defendant has conceded that this guideline is a dead letter in that no successor in title or a tenant has ever been denied the exclusive use of the relative parking lot. It is also not the case for the defendant that where there is a sale or a tenancy, the parking lots falls into the pool of available lots for allocation to other proprietors. The result is that, and this is my finding, the plaintiff is permanently deprived of the use and enjoyment of all the parking lots save that which has been allocated and those on which he may park without the objection of the relevant proprietors. The defendant does not deny this consequence of its decision to preserve the status quo.

The starting point of the plaintiff's case is s 13(1) of the Act which provides that the common property comprised in a strata title plan is held by the subsidiary proprietors as tenants in common proportional to their respective share value and for the same term and tenure as their respective lots held by them. Common property, as defined in s 3, includes car parks. Counsel for the plaintiff has submitted that by virtue of their co-ownership of the common property, each proprietor has the same right as the other to park his car in any of the parking lots. Counsel refers to *Jacobs* v *Seward*[1] and *Ong Hoo Hong* v *Kok Yin Weng*.[2] I agree, inasmuch as that at common law all co-proprietors have unity of possession and no proprietor can claim possession of a separate part of the property against his co-proprietor. In the absence of any statutory provision which abrogates or modifies the common law rights of co-owners of land, or any statutory power vested in the management corporation to enable it to do so, the management corporation has no power to prevent any proprietor from parking his car at any unoccupied parking lot by reserving it exclusively to some other person.

Counsel for the plaintiff says that the defendant has such a power under s 41(8) of the Act but that the existing scheme was not made in exercise of that power or in compliance with the requirements of that provision. Section 41(8) provides as follows:

> Without limiting the generality of any other provision of this section, a management corporation may, with the consent in writing of the subsidiary proprietor of a lot, pursuant to a unanimous resolution, make a by-law in respect of that lot conferring on that subsidiary proprietor the exclusive use and enjoyment of, or special privileges in respect of, the common property or any part thereof upon such terms and conditions (including the proper maintaining and keeping in a state of good and serviceable repair of the common property or that part of the common property, as the case may be, and the payment of money by that subsidiary proprietor to the management corporation) as may be specified in the by-law and may, pursuant to a unanimous resolution, make a by-law amending, adding to or revoking any by-law made under this subsection.

It is to be noted that the terms of the first declaratory order sought by the plaintiff are substantially what s 41(8) provides. Therefore, if, as is admitted by counsel for the defendant, the existing parking scheme has resulted in the granting of exclusive rights of use and enjoyment of or privileges in respect of any part of the common property to any proprietor or, conversely, deprives the plaintiff permanently from the use and enjoyment of any part of the common property, then the scheme can have no legal effect unless s 41(8) does not apply to car parks or, if it does a byelaw to such effect has been made in accordance with the requirements of that section.

The defendant's stand on the law is as follows: first, it relies on s 48(1) which imposes on the defendant the duty 'to control, manage and administer the common property for the benefit of all the subsidiary proprietors'. The defendant says that in maintaining the operation of the existing scheme, it is doing nothing more than performing its statutory duty. I do not accept that this is, in itself, a sufficient answer to non-compliance with s 41(8). The issue is whether the existing scheme is valid and not whether the defendant has the power to maintain its operation. The plaintiff has adduced no evidence to show how the scheme was established by the developers. It may be that when the developers sold the units to the proprietors (or their predecessors in title), they had allocated (whether on a discretionary or a contractual basis is not material) to each proprietor a parking lot for his exclusive use, and that these allocations collectively made up the existing scheme. Section 41(8) became law in 1987 by Act 16/87, well after the establishment of the scheme. Any existing arrangement, even if binding on the proprietors vis-a-vis the developers ceased to have effect when s 41(8) came into force as s 41(8) is incompatible with such an existing arrangement. (I should add here that when a similar situation arose in New South Wales, the relevant legislation made provision for the transitional protection of existing rights of proprietors.)

The second line of defence is that s 41(8) does not apply to car parks as the subject of car parks is expressly regulated under byelaw No 8 in Part II of the First Schedule. Byelaw No 8 reads as follows:

> A subsidiary proprietor or occupier of a lot shall not park or leave any motor vehicle or other vehicle upon the common property except with the approval of the management corporation.

In support of this argument, it is also contended that as the byelaw is enacted by Parliament and not made by delegated authority under the Act, it has the same status and legislative effect as s 41(8). (I should clarify that s 41(1) provides that every subdivided building shown in a strata title plan shall be regulated by byelaws which shall provide for the control, management, administration, use and enjoyment of the lots and common property, and s 41(2) provides that the byelaws shall include the byelaws set out in the First Schedule (including byelaw 8) which shall not be amended or revoked by the management corporation.) It is further contended that as byelaw 8 is not subordinate to s 41(8), they have to be read in harmony and the only way to reconcile them is to exclude the subject matter of car parks from the section. Counsel goes on to submit that if s 41(8) is construed to apply to car parks, it will give rise to the absurd consquence that every proprietor will need, in order to park his car, the unanimous resolution of the management corporation to park his car anywhere as he will have 'exclusive use' of the parking lot occupied by his car, and thus 600 of such resolutions will be required.

I do not accept his argument. First of all, there is no apparent inconsistency between s 41(8) and byelaw 8. I do

not see why the two provisions have to be reconciled by cutting down the defined meaning of 'common property' to exclude car parks in a condominium estate. If there were any inconsistency, I would be constrained to hold that the byelaw must give way to the substantive provision notwithstanding that it is enacted by Parliament. It is still a byelaw. The contrary proposition will mean that the substantive provision will give way to the byelaw, a proposition which is contrary to all established principles of construction. Section 41(8) is concerned with the grant of *exclusive* use and enjoyment of common property or of *special privileges* in respect thereof to proprietors with their consent, whereas s 41(1) is concerned with the control of the parking of cars generally. The section, where it operates, confers exclusive (and therefore additional) rights and privileges. The byelaw, where it operates, cuts down but does not deprive existing non-exclusive rights and privileges of the proprietors, and has to be exercised for the benefit of the proprietors as a whole. In exercising its power under byelaw 8, the management corporation may conceivably be able to decide that the plaintiff may not park at parking lot No 444 (because, let us say, it has been reserved for visitors), but I do not think that the power of control extends to deciding that the plaintiff or any proprietor may not park his car at parking lot No 444 or any other lots, even if unoccupied, save that allocated to him other than the one allocated to him. The same principle applies where the restriction concerns each other's reserved lots. Otherwise that would, in my view, be tantamount to granting exclusive rights and privileges to a part of the common property by putting into effect a scheme which has that effect. Section 41(8) contains an implied recognition of the rights of the co-proprietors to the use and enjoyment of the common property. The ambit of byelaw 8 is not precise. It is a general power applicable to all situations occurring in condominium estates. A condominium estate may not have sufficient parking lots to meet the requirements of all the proprietors, and some proprietors may park their cars on common property not designated or approved for parking. In that situation, byelaw 8 gives the management corporation a useful and necessary power to regulate the disorderly parking of cars on common property. But, in a situation as here where there is a parking lot, specifically approved as such, for every proprietor, I do not think byelaw 8 can be enlarged to enable the management corporation to, in effect, grant exclusive use and enjoyment or privileges in respect of the parking lots to each of the proprietors. If counsel for the defendant is correct in her construction of byelaw 8, the management corporation would have the power under the byelaw to confer exclusive rights or privileges to tenants or licensees of the residential units. To carry counsel's argument to its logical conclusion, the management corporation may make use of its power under the other byelaws to negate the operation of s 41(8) altogether.

I should add that byelaw 13 of the Strata Titles Act 1973 [NSW] which corresponds to byelaw 8 has not been construed to have the effect contended by counsel for the defendant. As regards counsel's argument on the absurdity of the consequences if s 41(8) is applied to car parks, I find that the epithet is more apt to describe the argument. The word 'exclusive' in this context does not mean 'excluded'. X may exclude Y from parking his car at parking lot No 444 for the time being by himself parking his car. That is not exclusive possession for the process of the law. 'Exclusive' in the present context means the right to exclude. Moreover, where it is desired to grant exclusive rights to a number of proprietors, s 41(8) does not require that separate byelaws be passed. Also, I do not see why a single, appropriately worded byelaw may not come within the requirements of the section.

The third argument of counsel for the defendant is that this court should not entertain this action on two grounds. The first is that the plaintiff's complaint is within the jurisdiction of the Strata Titles Board. Counsel refers to *Re Preston*[3] and *R* v *Epping & Harlow General Commissioners*[4] as authority for the proposition that where statute has provided a remedy before another tribunal, the aggrieved person should exhaust his remedies first before he can come to court. In this respect, counsel relies on s 96 (which authorizes the Board to invalidate a byelaw passed by the management corporation), s 97 (which authorizes the Board to invalidate any resolution passed by the management corporation at a meeting in breach of the provisions of the Act), and s 104 (which authorizes the Board to order the management corporation to consent to a proposal by a subsidiary proprietor to effect *alterations* to the common property). In my view, this ground has no merit. Section 96 does not apply since the defendant has not made any byelaw relating to the parking of motor vehicles in Pandan Valley. Nor can s 97 apply since the plaintiff is not complaining about the validity of any meeting. As regards s 104, the plaintiff has made no proposal to effect any change to the common property: the car parks were originally approved by the authorities, and the word 'alterations', in my view, does not include the allocation or a change in the allocation of parking lots.

The second ground is that the plaintiff should have proceeded under O 53 of the Rules of the Supreme Court 1970 as he is seeking judicial review of a decision of a statutory body. This ground is also misconceived. First, the plaintiff is seeking declaratory orders which the court has no power to grant under O 53. Secondly, this action is not one for judicial review. He is not complaining of a breach of his *public* law rights: he is seeking relief for infringement of his *private* law rights. Any decision of the defendant in exercise of its powers is not susceptible to judicial review as the defendant does not operate in the public domain: see *R* v *Disciplinary Committee of the Jockey Club*.[5]

For the reasons I have given, I hold that the plaintiff succeeds in his first prayer and in the terms thereof, with the omission therefrom of the word 'equal'. I do not propose to deal with the other reliefs. The result is that the plaintiff may park his car at any parking lot in Pandan Valley on a 'first come first served' basis. In coming to this conclusion, I am fully conscious that it may initially give rise to inconvenience or discord amongst many proprietors and residents in Pandan Valley pending the finalization of a parking scheme which either does not come with the purview of s 41(8) or, if it does, complies with its requirements. However, I cannot believe that the proprietors of Pandan Valley are unable to demonstrate that degree of goodwill and co-operation (which is what condominium living is all about) in order to agree on a parking scheme which is fair and equitable to all, eg a scheme which calls for the drawing of lots annually or at some other fixed time. There is nothing, under this scheme, to prevent mutual exchanges of parking lots to suit the needs of the proprietors concerned. If the proprietors are unable to achieve the necessary degree of co-operation to agree to any parking scheme, then they must live without any scheme and park on a 'first come first served' basis. As a last resort, they can also seek to change the law and in this respect, I can only add that in New South Wales, the requirement of an unanimous vote at a meeting of the managment corporation for this purpose has been reduced to a special resolution.

As regards cost, I think I should award costs to the plaintiff on the basis that he has brought this action not solely for his personal benefit but also in the interest of the subsidiary proprietors as a whole. On that view, he is entitled to costs on a full indemnity basis to be paid by the defendant. There will be an order on these terms.

*Application allowed.*

Solicitors: *B Rengarajoo & Associates; Spencer Gwee & Co.*

Reported by *Terence Tan Bian Chye*

## Jeyaretnam JB v Attorney General

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 979 OF 1989
CHAO HICK TIN JC
9 JULY 1990

*Constitutional Law — Parliament — Membership — Determination of when an MP ceases to be Member of the House — Convictions under the Penal Code — Whether the House must determine whether an MP ceases to be a Member — Automatic vacating of seat in the House upon conviction bringing into operation art 46 of the Constitution of the Republic of Singapore — Constitution of the Republic of Singapore, arts 45(1)(e), 46(2)(e) & 48*

*Civil Procedure — Declaration — Jurisdiction of a civil court — Civil court cannot overturn a criminal decision*

The plaintiff became a Member of Parliament on 31 October 1981 by winning a by-election. He was re-elected during the general election in December 1984. In December 1983, the Plaintiff, together with one Wong, were jointly charged and tried for four offences under the Penal Code (three offences under s 421 and one offence under s 199). The senior district judge convicted both the plaintiff and Wong of one charge under s 421 and acquitted them of the other two charges and ordered them to pay a fine of $1,000 each.

Both the plaintiff and Wong appealed against the conviction to the High Court. The public prosecutor also appealed against the acquittal as well as the sentence. The appeals were heard before the Chief Justice who set aside the acquittal under s 199 and ordered a retrial of both persons under that charge. He also allowed the appeal of the public prosecutor against the acquittals on the two charges under s 421 and sentenced each of the accused to pay a fine of $1,000 on each charge. The plaintiff's and Wong's appeals and the public prosecutor's appeal on the last charge were dismissed.

Retrial on the s 199 charge took place before a new senior district judge who convicted both the plaintiff and Wong and sentenced each to a term of imprisonment of three months and a fine of $10,000. They appealed to the High Court where on 10 November 1986 Lai Kew Chai J dismissed the appeals against conviction but allowed the appeals against sentence to the extent that the imprisonment term was reduced to one month plus a fine of $5,000.

Following the conviction of the plaintiff, the defendant reported to the Law Society of Singapore that the plaintiff was convicted of three charges under s 421 and one charge under s 199 of the Penal Code and this showed that the plaintiff was unfit for his profession and requested that the matter be referred to a Disciplinary Committee. The committee, after due deliberation, reported that cause of sufficient gravity existed for disciplinary action to be taken. The plaintiff was consequently required to show cause before a court of three judges why he should not be struck off, suspended or censured. After hearing the parties, the court ordered the plaintiff to be struck off the rolls on 19 October 1987. The plaintiff appealed to the Privy Council which held that the four convictions were wrong in law and restored him to the roll.

Meanwhile, on 12 November 1986, the Registrar of the Supreme Court informed the Speaker of Parliament of the outcome of the appeal on 10 November 1986 and also of the refusal of the High Court to the plaintiff's application that a question of law be reserved for the Court of Criminal Appeal. On the same day, the Clerk of Parliament wrote to the defendant. On